IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 47 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SAVITABEN DAHYABHAI GANDHI - Appellant(s)
Versus
CHANCHALBEN WD/O.CHANDULAL BAVABHAI PATEL & 3 - Defendant(s)

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Appearance :
MR JB SONI for Appellant(s) : 1,
MR GHANSHYAM AMIN for Defendant(s) : 1 - 4.
MR BHARAT T RAO for Defendant(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 20/07/2006

ORAL JUDGMENT

By way of this appeal, the appellant, original defendant has challenged the judgment and decree passed by the learned City Civil Court at Ahmedabad dated 30th

October, 1985 passed in Civil Suit No.4064 of 1982 in partly allowing the said suit by holding that the plaintiffs are entitled to redeem the suit property as described in the Schedule of the plaint which was mortgaged to the defendant by deceased Chandulal Bavabhai Patel by a registered mortgage deed dated 4-12-1970 and the learned trial Court further directed the plaintiffs to pay Rs.13,105.40p to the defendant and further directed the defendant to execute a deed of re-conveyance of the suit property or an acknowledgment in the office of the Sub Registrar, Ahmedabad and therefore, the original plaintiffs filed Civil Suit No.406 of 1982 in the City Civil Court at Ahmedabad for redemption of the suit property on payment of the mortgage money of Rs.12,000/- and to recover peaceful and vacant possession thereof and the future damages at the rate of Rs.550/- per month from the date of suit till its possession.

2. It was averred in the plaint that the deceased Chandulal was the owner of bungalow, as described in the Schedule of the plaint bearing No.11 of plot No.6/B situated at Sardar Patel Colony, Navrangpura, Ahmedabad consisting of two rooms, kitchen, bath room etc, and after his death, the plaintiffs became the owners of the

same as his heirs. It was averred in the plaint that deceased Chandulal took money loan of Rs.12,000/- from Dahyabhai K Gandhi- husband of the defendant and in security thereof, mortgage part of that bungalow was handed over to her at the instance of her husband and executed mortgage deed dated 4-12-970 and the same was duly registered and the possession was handed over to her by virtue of the said mortgage deed and it was agreed that deceased Chandulal had not to pay any interest over that amount and the defendant had not to pay any rent to deceased Chandulal for occupation thereof and thus, it was usufructuary mortgage. It was also further averred that as per the terms and condition of the mortgage deed, deceased Chandulal had to redeem the mortgage after expiration of three years and if he paid mortgage money of Rs.12,000/- to the defendant after expiration of three years but before expiration of five years, then the defendant had to hand over the peaceful and vacant possession of the suit property to him, and if during that period, the defendant was not in a position to vacate the same, then she was entitled to keep the same on lease on payment of rent at the rate of Rs.150/- per month exclusive of taxes redemption, if the defendant was inclined to keep it and she was entitled for execution of

the lease deed accordingly. It was further averred in the plaint that after the death of Chandulal on 12-12-1981, the plaintiffs as his heirs, acquired the right of equity of redemption in respect of the mortgage deed of the suit property and they are entitled to get the suit property redeemed on payment of Rs.12,000/- and to recover its vacant and peaceful possession from the defendant and therefore, the suit was filed.

3. The suit was resisted by the defendant by filing written statement at Exh-13. It was submitted that the mortgage deed was executed on making the payment of Rs.12,000/- to deceased Chandulal and he handed over the peaceful and vacant possession of suit property to her. However, she denied the fact that as per the terms and condition of the mortgage deed, deceased Chandulal had to redeem mortgage after expiration of three years and if he pays the mortgage amount of Rs.12,000/- to her after expiration of three years but before expiration of five years, then she had to hand over the peaceful and vacant possession of the suit property to him and if during that period, she was not in a position to vacate the suit property, then she was entitled to keep the same on lease if she was inclined to pay the rent at the rate of

Rs.150/- per month. It was submitted that the condition in the mortgage deed would amount to a clog on equity of redemption and hence it was void and unenforceable at law. It was further submitted that in fact the property was let out by deceased Chandulal and thereafter on that express condition, he was advised money loan. It was also submitted by her that she got the suit property repaired with the consent and to the knowledge of deceased Chandulal and she incurred expenses to the tune of Rs.8686.15p and so, the plaintiffs are liable to pay the said amount to her at the time of redemption of the mortgage. The learned trial Court raises the issues at Exh-45. On behalf of the plaintiffs, plaintiff No.4 Hasumatiben Ashwinbhai Patel was examined. They produced various documentary evidences with lists Exhs-24,52 and 71. On behalf of the defendants, three witnesses were examined i.e. Dahyabhai Kachralal Dave, Vinodbhai Purshottam Prajapati and Narhar Vasudeo Dave. They have also produced documentary evidences with lists Exhs-47 and 59. On consideration of documentary as well as oral evidence, the learned trial Court did not accept the contention on behalf of the defendant with regard to letting out of the suit property by deceased Chandulal either to the defendant or to her husband prior to 4-12-

1970. The learned trial Court also held that deceased Chandulal was in need of money and he having good relation with her husband, advanced Rs.12,000/- to the deceased and in security thereof, he mortgaged suit property to her and executed a mortgage deed dated 4-12-1970 and he handed over the peaceful and vacant possession of the suit property to them. The learned trial Court also did not accept the submission with regard to the amounts spent repairing the suit property and accordingly decreed the suit of redemption of the mortgage on payment of Rs.13,105/- to the defendant. The learned trial Court on considering the terms and condition imposed in the said mortgage deed, held that the said terms and condition would amount to a clog of equity of redemption and therefore, the same is void and unenforceable at law. The learned trial Court rightly held that the plaintiffs are entitled to redeem the mortgage and on payment of mortgage amount, the defendant was required to hand over the peaceful and vacant possession to the plaintiffs as heirs of deceased Chandulal. As the defendant did not produce any reliable documentary evidences in support of her version regarding the repair carried out twice in the suit premises with the consent and to the knowledge of deceased Chandulal

and she incurred expenses to the extent of Rs.8686.15p, the learned trial Court has rightly not passed any decree to that effect. On going through the entire record and proceedings, oral as well as documentary evidence, this Court is in complete agreement with the reasonings and findings of the learned trial Court. On considering the mortgage deed, the learned trial Court has rightly decreed the suit for redemption of mortgage.

4. For the reasons as stated above, the appeal fails and is dismissed accordingly. No costs.

(M.R.SHAH,J.)

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